

REMARKS

In the Official Action of January 13, 2005 the Examiner objected to the Declaration that had been submitted on behalf of a prior assignee. The basis for the Examiner's objection was his assertion that correction of inventorship by way of a reissue application was improper and the patentee should have filed a request for a certificate of correction under the provisions of 35 U.S.C. 256 and 37 C.F. R. 1.324.

The Examiner is respectfully requested to reconsider this objection and accept the Reissue Application Declaration submitted herewith and signed by Alan J. Leszinske, assignee of record of the entire right, title and interest in the application.

To obtain a certificate of correction of inventorship under 35 U.S.C. 256 and 37 C.F.R. 1.324 the latter requires that the current named inventor, Garth Gobeli, provide a statement either agreeing to the change of inventorship or that he has no disagreement in regard to the change. It is believed that no such statement could be procured from Mr. Gobeli. The facts supporting this belief are recited in the Declaration of Alan J. Leszinske in Support of Reissue Patent Application Serial No. 10/725,361 appended to this Response. Confronted with the inevitable inability to obtain a statement from Mr. Gobeli, the decision was made to proceed to correct inventorship by way of reissue under 35 U.S.C. 251 and 37 C.F.R. 1.172.

MPEP §1481 provides:

“If an inventor is not available, or refuses, to submit a statement, the assignee of the patent may wish to consider filing a reissue application to correct inventorship, since the inventor's statement is not required for a non-broadening

reissue application to correct inventorship. See MPEP §1412.04.”

And MPEP §1412.04 provides:

“REISSUE AS A VEHICLE FOR CORRECTING INVENTORSHIP

Where the provisions of 35 U.S.C. 256 and 37 C.F.R. 1.324 do not apply, a reissue application is the appropriate vehicle to correct inventorship.”

This reissue application with the Declaration of the assignee submitted herewith fully complies with 35 U.S.C. 251 and 37 C.F.R. 1.172 and allowance thereof is respectfully requested.

Respectfully submitted,

CAHILL, VON HELLENS & GLAZER P.L.C.

Date

4/6/05


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